

Civil No. 22,692 ✓

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

EDITH G. BAILEY,

Appellant

v.

THE UNITED STATES,

Respondent

JUN 24 1968

APPELLANT'S BRIEF

Appeal from the Judgment of the United States  
District Court, Eastern Division  
State of California

Honorable Sherrill Halbert, Judge

EDITH G. BAILEY, Appellant  
In Propria Persona

FILED

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Appeal from the Judgment of the United States  
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State of California

Honorable Sherrill Halbert, Judge

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STATEMENT OF THE CASE

Appellant herein, Edith G. Bailey, was employed on July 7, 1957, at McClellan Air Force Base, California, as a civil service employee, classification GS-7 Information Specialist. On November 27, 1960, appellant was promoted to classification GS-9 News Writer; and later reduced to GS-5 News Writer on March 5, 1961.

Appellant filed appeal to the 12th Civil Service Regional Office, San Francisco, on March 15, 1961, from the reduction to GS-5. There was an adverse determination of the appeal of March 15, 1961. Appellant thereupon appealed to the Commission's Board of Appeals and Review, Washington, D. C., on May 16, 1961. Appeal was then made to the Office of the President of the United States, on November 24, 1961. This last appeal was referred to the Commission. On November 29, 1961,

the Commission advised appellant that its decision of June 29, 1961, was final, and that appellant had exhausted her appeal rights.

Executive Orders 10987 and 10988, dated January 18, 1962, were interpreted by appellant as providing a method of appeal from the adverse determination of her claim by the Civil Service Commission. Section 14 of Order No. 10988 reads in part, as follows:

"The head of each agency, in accordance with the provisions of this order and regulations prescribed by the Civil Service Commission, shall extend to all employees in the competitive civil service rights identical in adverse action cases to those provided preference eligibles under section 14 of the Veterans' Preference Act of 1944, as amended. . . ."

Appellant attempted to reopen her case on appeal by means of letters to the 12th Civil Service Regional Office on May 17, 1964 and to the Commission's Board of Appeal and Review on June 29, 1964. On August 11, 1964, the Commission stated she had no basis for further Commission review.

In Court of Claims #48-65, June 8, 1965, appellant filed a petition in propria persona of claim for declaration of her rights in the U. S. Court of Claims, Washington; this was dismissed without prejudice by the Court of Claims. On December 2, 1966, appellant filed the second claim, Court of Claims #13-66, which claim was dismissed for lack of jurisdiction and laches.

The action from which appeal is taken was filled March 5, 1967.

#### STATEMENT OF FACTS

Appellant was employed on July 7, 1957, at McClellan Air Force Base, California, as a civil service employee, classification GS-7 Information Specialist. Appellant was assigned duties of a GS-9 position on January 10, 1960. Appellant was denied promotion to Grade GS-9 and remained a GS-7 to

1 serve a trainee period before becoming eligible for the GS-9. In July 19  
2 appellant's supervisor advised her that she was not eligible for the  
3 classification of GS-9, and on September 1, 1960, appellant was officiall  
4 assigned new duties. The duties of her new position were as editor of  
5 the base newspaper, also a GS-9 position. Appellant was advised she wou  
6 be promoted to the GS-9 after serving a probationary period.

7 Appellant contested the failure to raise her classification to the  
8 GS-9 rating called for by the work assigned. Appellant filed a grievance  
9 on August 19, 1960, after informal discussions did not resolve the issue.  
10 Numerous delays followed and on October 10, 1960, an informal hearing,  
11 taped and transcribed, was unsuccessful in resolving the grievance.  
12 Appellant then filed a formal grievance, sending a copy of the grievance  
13 outlining her complaint to the base Civilian Personnel Officer. In Nover  
14 ber 1960, the base Civilian Personnel Officer offered appellant an immed  
15 iate promotion to a GS-9 classification if she would withdraw her grievan  
16 After being assured this offer was made in good faith, appellant withdrew  
17 the grievance.

18 Appellant's promotion was effective on November 27, 1960. On  
19 December 14, 1960, appellant was notified her position was being abolish  
20 by a reduction-in-force action. On March 5, 1961, her position was  
21 abolished and she was reassigned as a GS-5 News Writer.

22 Appellant then filed a grievance based on lack of good faith in  
23 this action. She exhausted her administrative remedies. She enlisted  
24 the assistance of a Congressman, who was unable to help her.

25 After the issuance of Executive Order 10988, which permitted all  
26 civil service employees, not just veterans, to question the good faith

1 of personnel actions, appellant again pursued a course through administra-  
2 tive channels and upon exhausting these remedies, she turned to the judici  
3 branch.

4 I

5 APPELLANT'S CLAIM IS NOT BARRED BY LACHES

6 In the Memorandum and Order filed herein January 2, 1968 the trial  
7 Court held ". . . that this action is barred by laches." The Court further  
8 states ". . . plaintiff states that her delay in filing suit here resulted  
9 from mistakenly pursuing her remedies in the Court of Claims. This con-  
0 tention is without merit since the records of that Court show that her first  
1 petition was filed on February 11, 1965 over 43 months after the final ad-  
2 ministrative action noted above."

3 It is respectfully submitted that the Court below erred in this hold-  
4 ing.

5 Laches in a general sense is the neglect, for an unreasonable and  
6 unexplained length of time, under circumstances permitting diligence, to  
7 do what in law should have been done, (Kawneer v. U. S., 100 Ct.Claims 523)  
8 resulting in a disadvantage to the other party, (Robinson v. Linfield College  
9 D. C. Washington 42 F.Supp. 147) 30A C.J.S. 20. (Emphasis added.)

10 The delay here is not unexplained. From March 15, 1961 through  
11 November 29, 1961, appellant pursued her administrative remedies.

12 Subsequent to the Executive Orders dated January 18, 1962, appellant  
13 pursued her administrative remedies and on August 11, 1964, appellant was  
14 advised that she had no basis for further Commission review.



1 In 1965, appellant filed for judicial review in the Court of Claims.

2 Her first complaint before that body was dismissed without prejudice  
3 June 8, 1965.

4 On January 11, 1966, appellant filed a second petition in the Court  
5 of Claims; this second petition was dismissed for failure to state a claim  
6 within the jurisdiction of the Court and because the claim was barred by  
7 laches.

8 In 30A, C.J.S. 23, in a discussion of laches it is stated as follows:

9 "A stale claim or demand in its proper sense is one which  
10 for a long time has remained unasserted; one which is first  
11 rendered it difficult or impossible for the court to ascertain  
12 the truth of the matter in controversy and do justice between  
13 the parties, or as to create a presumption against the exist-  
14 ence or validity of the claim, or a presumption that it has  
15 been abandoned or satisfied." (Emphasis added.)

14 Under the circumstances of the present case appellant's claim is  
15 seven years old. It has not remained unasserted. Appellant asserted her  
16 case through the proper administrative channels, citing Air Force regula-  
17 tions Ch AFP2, AFM 40-1, and SMAMA Regulation 40-13, 22 Apr 59; the Classi-  
18 fication Act of 1949, as amended, governing the Civil Service Commission  
19 actions; Public Law 253-82d Congress; and Executive Orders 10987 and 10988.

20 There has been no unexplained delay of the assertion of appellant's  
21 right which would render it either difficult or impossible for the Court  
22 to ascertain the truth of the matter in controversy. The Court below has  
23 available complete records of all transactions involving appellant's  
24 asserted right.

25 There can be no presumption created against the appellant or arising  
26 against appellant to question the existence or validity of her claim.

1 Appellant has twice pressed her claim through the administrative procedure  
2 set up by the Air Force and the Civil Service Commission; appellant has  
3 twice brought her claim before the U. S. Court of Claims.

4 There can be no presumption that appellant's claim has been abandoned  
5 or satisfied.

6 II

7 APPELLANT HAS NOT HAD HER DAY IN COURT

8 Appellant herein has twice appealed before the Court of Claims to present  
9 her claim to judicial determination of her claim. Both appearances before  
10 the Court of Claims were made in propria persona.

11 Appellant is presumed to know the law. Her first petition before the  
12 Court of Claims was dismissed without prejudice and with no direction.  
13 Appellant questioned the good faith of the reduction-in-force action which  
14 reduced her four civil service grades. In 67 C.J.S. 261 it stated as  
15 follows:

16 "It is generally the rule that power exists to dismiss  
17 an employee in the civil service where the working force is  
18 reduced for reasons of economy, even in the absence of abolition  
19 of the position, or where the office is abolished in good  
20 faith, as in the case of a good-faith reorganization of the  
21 department with a view to securing greater efficiency . . . .  
22 The power to abolish a position may not, however, be used to  
23 effect the discharge (Ed.: and therefore, impliedly, the  
24 demotion) of an employee protected by the provisions of civil  
25 service regulation unless such power is exercised in good  
26 faith."

27 Until the advent of Executive Order 10988, effective July 1, 1962,  
28 it was impossible for appellant to question the "good faith" demotion incurred  
29 by her.

1 Conclusion:

2 Appellant respectfully submits that the decision of the court that her  
3 attempt to adjudicate her rights in the Federal District Court is the  
4 placing of a stale claim is not supported by the facts. Appellant did not  
5 "sit on her rights", but followed them with due diligence through changes  
6 in administrative procedures, through court actions filed in propria  
7 personna which were dismissed without direction as to correct procedure  
8 until at last she is forced to appeal for justice to this Court.

9 It is suggested that the judgment of the Court below be reversed with  
0 direction to hear appellant's claim.

1 Dated: 6 June 1968

2 Respectfully submitted,

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5 EDITH G. BAILEY  
6 Appellant  
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